

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Andrew Hauer,

Complainant,

vs.

Michael Katch,

Respondent.

ORDER FINDING  
NO PRIMA FACIE VIOLATION AND  
DISMISSING COMPLAINT

On July 30, 2009, Andrew Hauer filed a Complaint with the Office of Administrative Hearings alleging Michael Katch violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material relating to Mr. Katch's candidacy for Minneapolis City Council Ward 7.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on July 30, 2009, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on July 30, 2009.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint fails to set forth a *prima facie* violation of Minn. Stat. § 211B.06.

**ORDER**

**IT IS ORDERED:**

That the Complaint filed by Andrew Hauer against Michael Katch is DISMISSED.

Dated: August 3, 2009

s/Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

**NOTICE**

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

The Respondent, Michael Katch, is a candidate for Minneapolis City Council, Ward 7 in the upcoming 2009 election. He is running as an Independent Party candidate. The current City Council Member and incumbent candidate for Ward 7 is Lisa Goodman. She is also the DFL Party endorsed candidate.

The Complaint alleges that the Respondent violated Minn. Stat. § 211B.06 by disseminating false campaign material. According to the Complaint, Mr. Katch has, throughout the month of July, disseminated business cards that state the following:

*Michael J. Katch*  
Mpls City Council  
Ward 7

The backside of the business card states:

Read my column at:

[www.mplsmirror.com](http://www.mplsmirror.com)

Follow The Money

[Michael.Katch2009@gmail.com](mailto:Michael.Katch2009@gmail.com)

The Complainant contends that the business card misleads the public by implying that Mr. Katch is the current City Council Member for Ward 7.

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material. In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of whether it is false. Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”<sup>1</sup>

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.<sup>2</sup> It does not prohibit inferences or implications, even if misleading. In addition, the statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said.<sup>3</sup>

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<sup>1</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>2</sup> *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

<sup>3</sup> *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt*

In *Miske v. Benedict*,<sup>4</sup> the Minnesota Supreme Court considered a similar complaint involving a candidate running for the office of constable at large in the city of St. Paul. As part of his campaign, the candidate prepared and distributed cards with the following statement: "BENEDICT G. FISCHER 1443 Thomas St. CONSTABLE AT LARGE." His opponent alleged that Fischer had, by virtue of these cards, held himself out as the incumbent constable. The Court rejected this allegation and explained:

"It is extremely difficult to deduce from the words on this card that defendant was holding himself out as an incumbent. The cards were circulated at election time. Certainly few, if any persons would take the card to be a professional calling card as distinguished from a campaign card."<sup>5</sup>

Likewise, with Respondent's campaign cards, the ordinary reader would not conclude that Respondent is holding himself out as the current City Council Member for Ward 7. This conclusion is bolstered by the fact that the card urges recipients to read Mr. Katch's "Follow the Money" column on the website [www.mplsmirror.com](http://www.mplsmirror.com). Not only is this type of information more typical of campaign cards than it is official business cards, the referenced article makes clear that Katch is not the incumbent City Council Member for Ward 7.

The Administrative Law Judge concludes that the Complainant has failed to allege a *prima facie* violation of Minn. Stat. § 211B.06. The phrase, "Michael Katch Mpls City Council Ward 7" is not a false statement of fact. The Complaint is dismissed.

**E. L. L.**

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*Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

<sup>4</sup> 259 N.W. 18, 193 Minn. 514 (Minn. 1935).

<sup>5</sup> *Id.* at 19; See also, *Behrens v. Rossbach & Committee*, OAH Docket No. 12-6361-17183-CV (2006) (<http://www.oah.state.mn.us/aljBase/636117183.DISM.OR.smm.htm>).